

Opportunities Exist to Increase the Accountability and Independence of the Board of Review

A presentation to the Joint Legislative Oversight
Committee on Unemployment Insurance

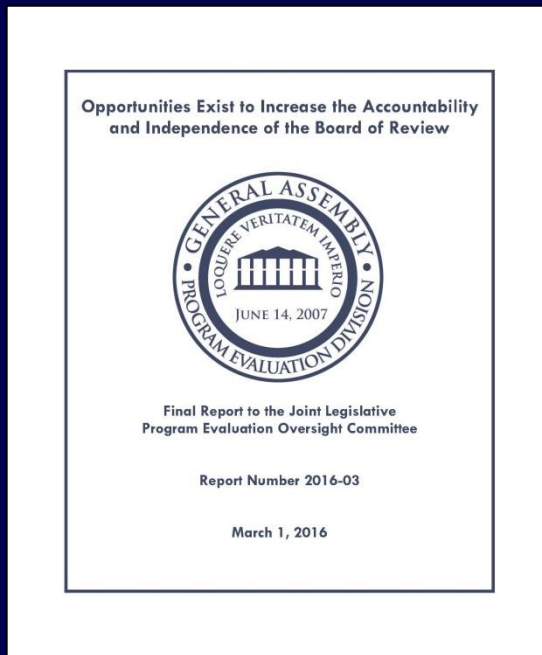
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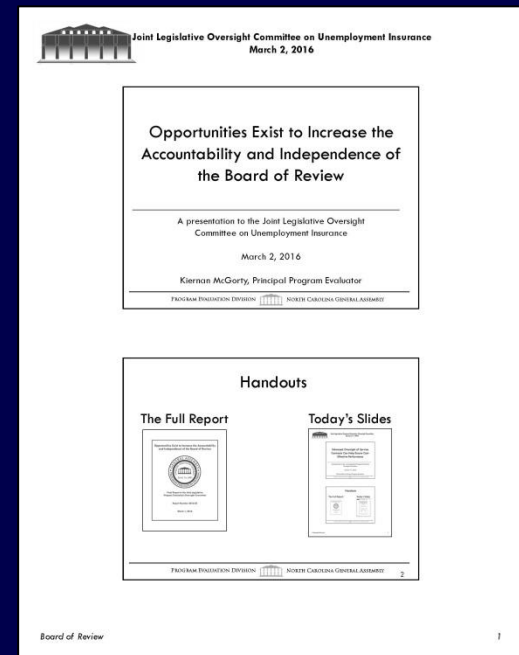


Handouts

The Full Report



Today's Slides



Historical Context

- 1941-2010: Employment Security Commission handled initial unemployment benefit determinations and lower and higher authority appeals
- 2011: General Assembly transferred functions of Employment Security Commission to Division of Employment Security; created Board of Review to hear higher authority appeals
- December 2013: Governor appointed first Board
- January 2014: Board became operational



Our Charge

- Directive: S.L. 2015-238 directed PED to study the value provided to the State by the Board of Review
- Agencies: Board of Review & Division of Employment Security (DES)
- Team: Kiernan McGorty, Jeff Grimes, Sean Hamel

Report p. 2



Overview: Main Findings

1. The Board's reliance on DES staff undermines the Board's independence
2. The Board lacks policies and procedures to ensure consistency and continuity of operations
3. The Board does not track the data necessary to ensure continuous improvement of operations



Overview: Recommendations

The General Assembly should

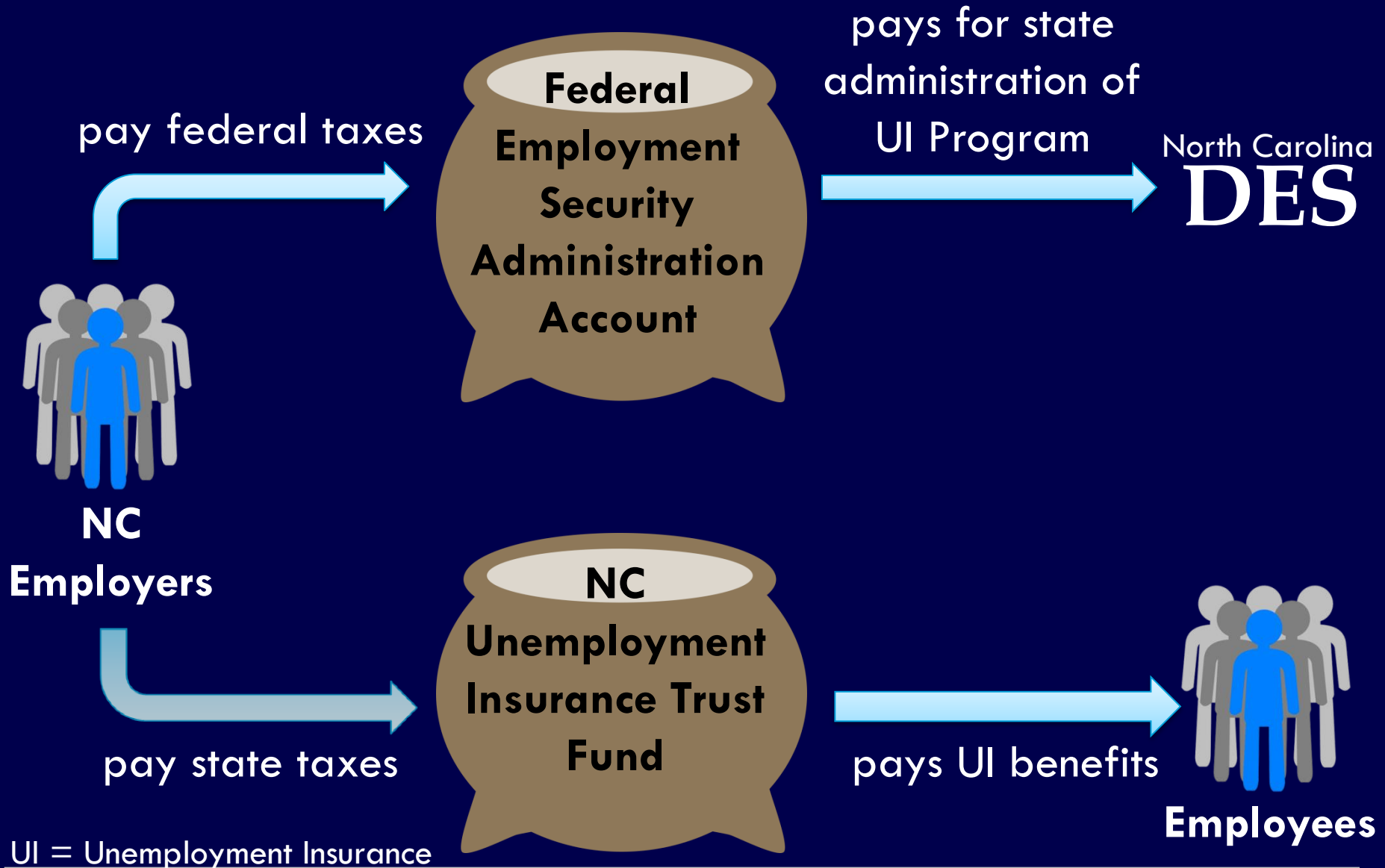
1. Transfer staff from DES to the Board of Review
2. Modify statute to direct the Board to develop policies, procedures, and standards
3. Direct DES to work with the Board to track and collect data



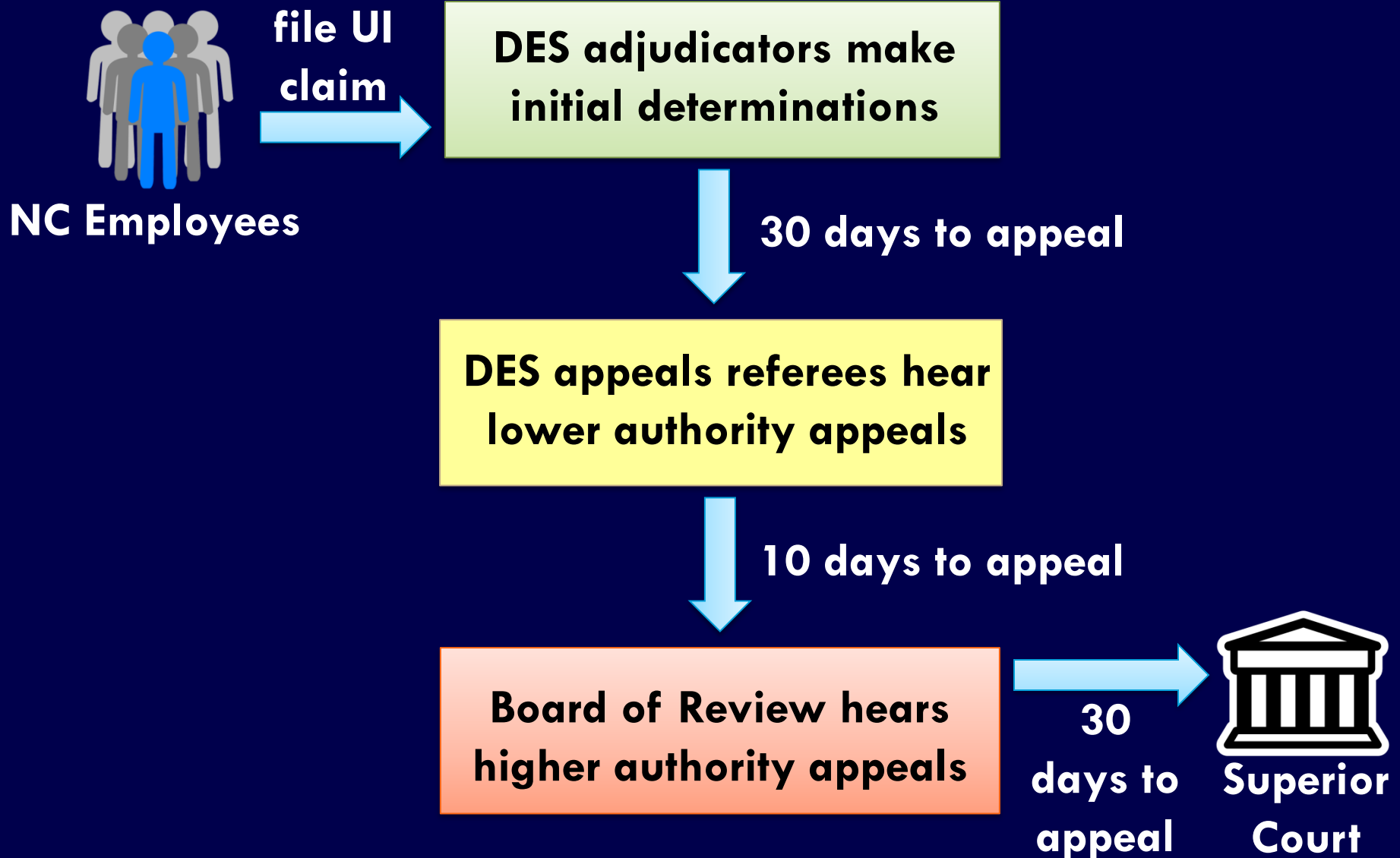
Background



Federal Funds Cover Administrative Costs



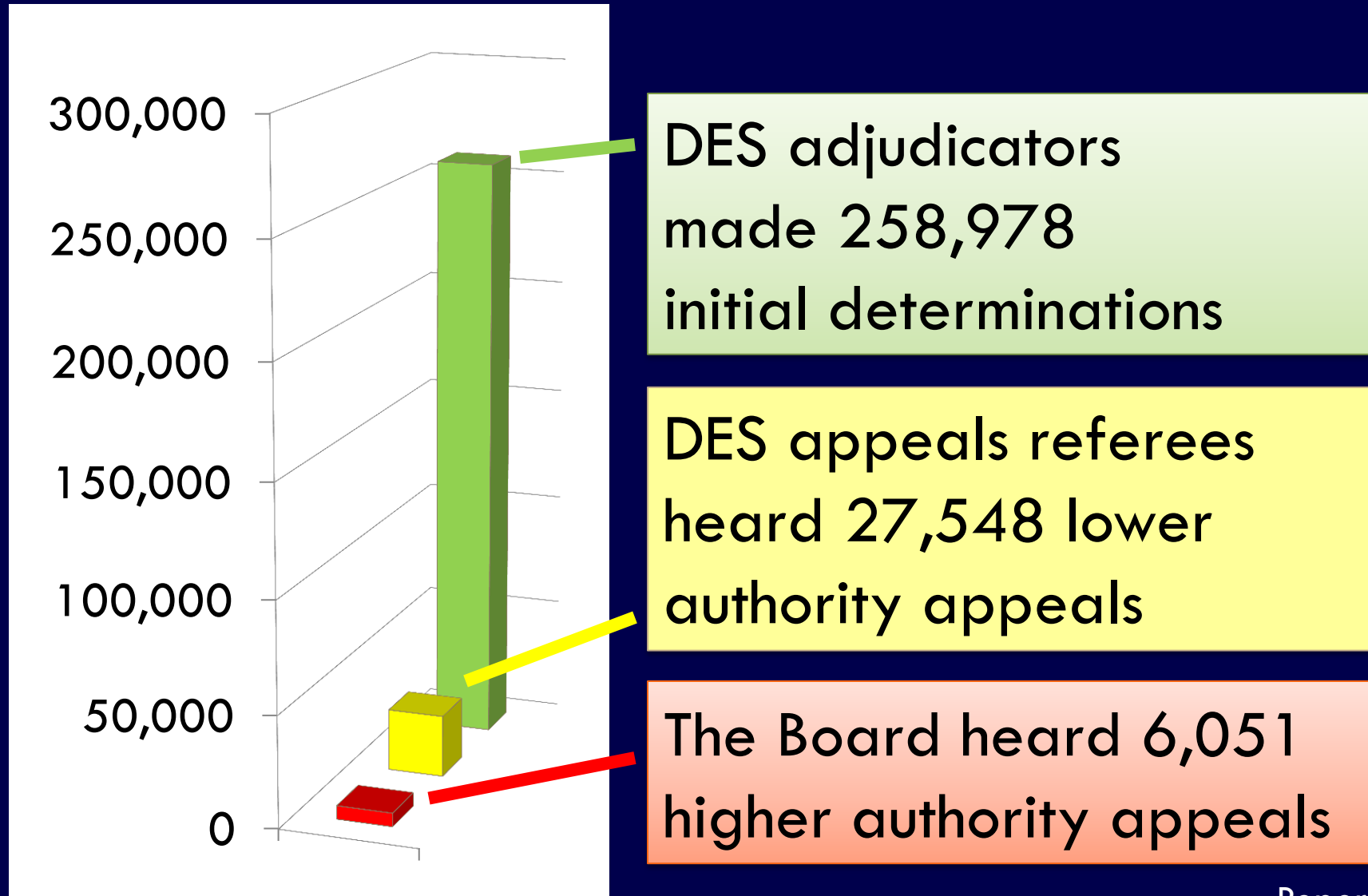
Appeals Process



UI = Unemployment Insurance



FY 14-15 Initial Determinations and Appeals



Report p. 5

Structure of Higher Authority Appeals

- To receive federal funds, states must offer lower authority appeals
- No federal requirement to offer higher authority appeals
- 47 states offer higher authority appeals
 - Hawaii, Minnesota, and Nebraska do not

Report pp. 8-10



States Structure Higher Authority Appeals in a Variety of Ways

| | NC | # of States (including NC) |
|---|----|-------------------------------|
| A board hears higher authority appeals | ✓ | 41 |
| Board has three members | ✓ | 32 |
| Members appointed solely by Governor | ✓ | 33 |
| At least one member | | |
| Represents employees | ✓ | 19 |
| Represents employers | ✓ | 19 |
| Represents the public | ✓ | 14 |
| Must be an attorney | ✓ | 9 |

Report p. 10



NC's Cost of Higher Authority Appeals

| | Role in Higher Authority Appeals | Allocated Expense |
|-----------------------------|---|--------------------------|
| DES, Appeals Section | Prepares higher authority appeals files | \$210,390 |
| DES, Legal Section | Reviews appeals and makes recommendations | \$855,297 |
| Board of Review | Makes higher authority appeals determinations | \$611,437 |
| FY 14-15 Total | | \$1,677,124 |

Report p. 11



NC's Cost Per Determination is Efficient



Benefits of Higher Authority Appeals

- Less formal than superior court and easier for parties to navigate without legal representation
- Proceed more quickly than appeals in superior court
- Serve as a mechanism for internal feedback and quality control for DES

Report pp. 16-17



Benefits of Board of Review

- Provides the perception that parties are receiving an independent review of their lower authority appeals
- Provides impartial venue for hearing tax cases
 - Board processed 33 tax cases in FY 14-15

Report p. 17



Findings



Finding 1

The Board of Review's reliance on DES staff undermines the Board's independence.

Report p. 17



Statute Stipulates Independence

- N.C. Gen. Stat. § 96-15.3 stipulates the Board and its staff must perform their job responsibilities independent of
 - the Governor
 - the General Assembly
 - the Department of Commerce
 - the Division of Employment Security

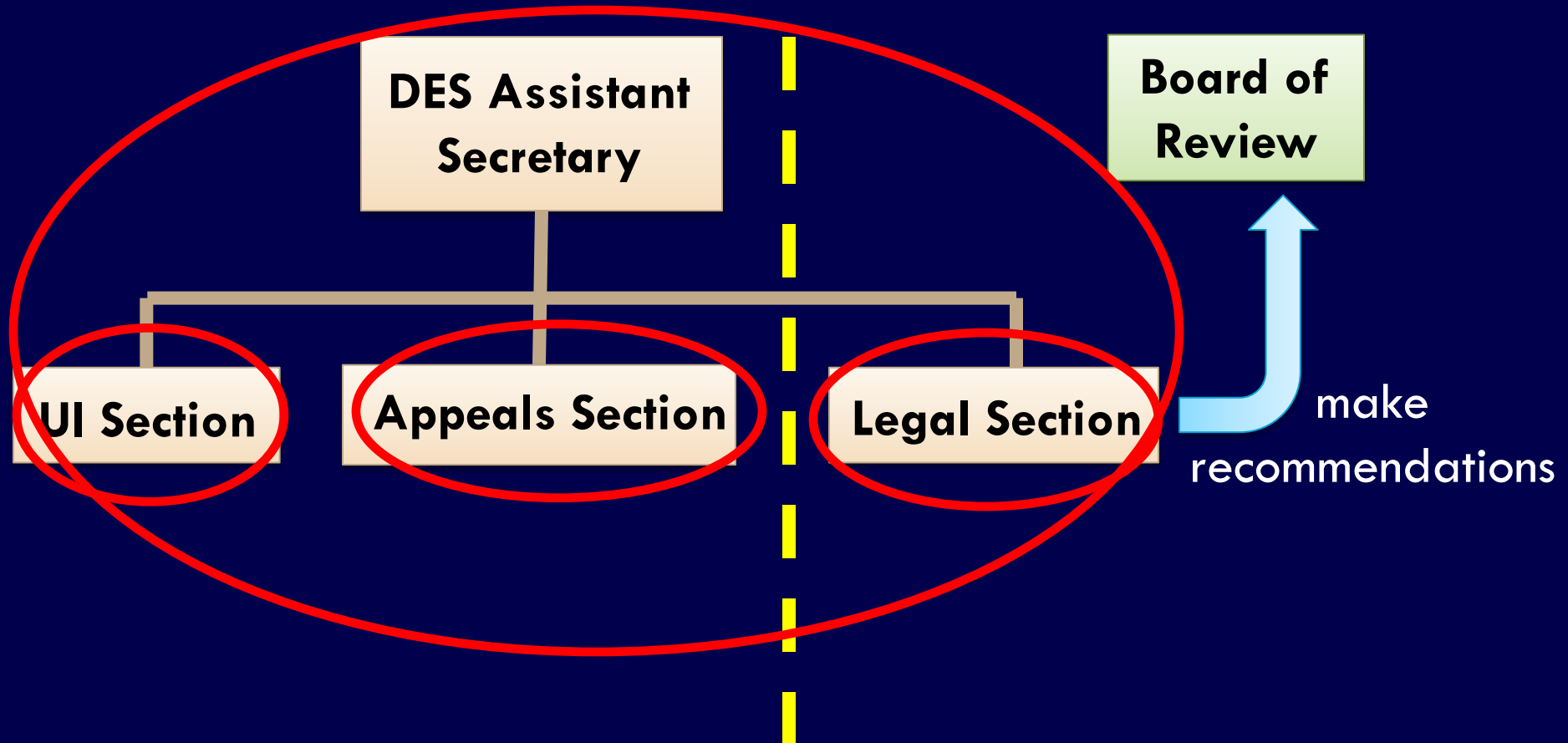
Report p. 17



Current Structure Hinders Independence

**Initial Determinations &
Lower Authority Appeals**

Higher Authority Appeals



UI = Unemployment Insurance

Report p. 18



Current Structure Has Inefficiencies

FY14-15 Staffing

| | FTE |
|------------------------|--------------|
| Appeals Section | |
| Administrative | 4.00 |
| Legal Section | |
| Attorney | 3.12 |
| Paralegal | 0.20 |
| Administrative | 5.49 |
| Board of Review | |
| Administrative | 1.00 |
| Total | 13.81 |

Board's Proposed Staffing

| | FTE |
|------------------------|--------------|
| Appeals Section | |
| Administrative | 4.00 |
| Board of Review | |
| Attorney | 2.00 |
| Administrative | 4.00 |
| Total | 10.00 |

Report p. 20



Current Structure Creates Potential Conflicts of Interest for Tax Cases

- For any particular tax case,
 - One DES attorney is assigned to represent DES
 - Another DES attorney is assigned to support the Board as the hearing officer
- DES attorneys may have a potential conflict of interest when they act as the hearing officer for a case in which the party bringing the case is their employer

Report p. 20



Finding 2

The Board of Review lacks policies and procedures to ensure consistency and continuity of operations.

Report p. 21



Statute Charges the Board with Developing Policies

- N.C. Gen. Stat. § 96-15.3 stipulates the Board is responsible for determining policies and procedures for higher authority appeals
- Currently, policies and procedures for how cases are to be received, processed, and determined do not exist

Report p. 21



Policies and Procedures Are Important

- Ensure a standard of operation
- Ensure cases are handled consistently
- Establish common definitions of administrative processes
- Establish steps to process different types of cases

Report p. 21



Finding 3

The Board of Review does not track the data necessary to ensure continuous improvement of operations.

Report p. 21



Data Is Needed to Inform Assessment of the Board's Value

| Data Needed | Data Will Inform |
|---|-------------------------|
| Rate at which superior courts reverse Board determinations | Performance |
| Number of cases referred by recommended action | Workload and timeliness |
| Number of cases remanded or modified | Quality assurance |
| Rate at which Board disagrees with DES attorney recommendations or finds errors | Utility |

Report pp. 22-24



Recommendations



Recommendation 1

The General Assembly should transfer staff from DES to the Board of Review.

Report p. 25



Recommendation 2

The General Assembly should modify statute to direct the Board of Review to develop policies, procedures, and standards for higher authority appeals operations.

Report p. 25



Recommendation 3

The General Assembly should direct DES to work with the Board of Review to track and collect the data necessary to support appeals operations.

Report p. 26



Summary: Findings

1. The Board's reliance on DES staff undermines the Board's independence
2. The Board lacks policies and procedures to ensure consistency and continuity of operations
3. The Board does not track the data necessary to ensure continuous improvement of operations



Summary: Recommendations

The General Assembly should

1. Transfer staff from DES to the Board of Review
2. Modify statute to direct the Board to develop policies, procedures, and standards
3. Direct DES to work with the Board to track and collect data



Summary: Responses

- Both the Board of Review and DES reported general agreement with the recommendations



Report available online at
www.ncleg.net/PED/Reports/reports.html

